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# ***OUTPATIENT TREATMENT OPERATIONS:***

**1470**

## **PATIENT RIGHTS & PROTECTION ISSUES**

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## ***CONREP POLICY AND PROCEDURE MANUAL***

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# ***OUTPATIENT TREATMENT OPERATIONS:***

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## **PATIENT RIGHTS & PROTECTION ISSUES**

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### ***INTRODUCTION***

#### **Overview**

This section of the CONREP Policy and Procedure Manual addresses several separate issues related to patient rights and protection of the public:

- \* Confidentiality;
- \* Patient Grievance Process;
- \* Patient Access to Records;
- \* Duty to Warn;
- \* Possession of Dangerous Weapons;
- \* Protection of Research and Evaluation Subjects;
- \* Offender Registration; and
- \* Voter Registration Procedures.

#### **Other Reporting Requirements**

This manual section does not include all specific reporting requirements, such as those that deal with child and/or elder abuse. All CONREP program staff are expected to comply with all pertinent reporting laws.

#### **Section Code References**

For some of the above subject areas, specific code sections are referenced. In most instances, only a partial summary of the section is given. All manual readers should refer to the complete text of each of the actual code sections referenced when addressing questions concerning any of the subjects discussed.

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### **PATIENT RIGHTS & PROTECTION ISSUES**

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#### ***CONFIDENTIALITY***

##### **Program Responsibility [WIC 5328]**

It is the duty and responsibility of each Conditional Release Program, including all staff and subcontractors, to maintain strict confidentiality in relation to the information obtained from or about CONREP patients. The specific provisions regarding confidentiality are discussed in Welfare and Institutions Code [WIC] Section 5328.

##### **Patient Records**

All Forensic Conditional Release Program information and records obtained in the course of providing treatment to CONREP patients must be considered as confidential and be kept in a secure location. Information contained in the patient record is protected by and may be only be released pursuant to the provisions of Welfare and Institutions Code Section 5328. There are civil penalties for the unauthorized release of patient information. (Also, see **Patient Access to Records** on following pages in this section.)

##### **Release of Patient Information**

##### **Examples of Allowable Disclosure**

WIC 5328 also contains provisions under which patient information may be disclosed. The following is a partial list of some of these circumstances:

- \* Communications between professionals when providing services, including the county mental health director or designee;
- \* Other agencies when making appropriate referrals;
- \* Law enforcement officers pursuant to WIC Sections 5152.1 and 5250.1;
- \* The courts, as necessary in the administration of justice; and
- \* Governmental law enforcement agencies as needed for the protection of federal and state elected officials and their families.



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#### ***CONFIDENTIALITY***

##### **Release of Patient Information (cont.)**

Crime Investigation  
[WIC 5328.01]

This WIC provision permits the release of information to government law enforcement agencies investigating evidence of a crime where the records relate to a patient who is confined or has been confined as a judicially committed patient with either:

- \* Written consent of the patient; or
- \* Pursuant to a court order from the county where the records are kept.

Communication with Correctional  
Agencies [WIC 5328.02]

All confidential information and records may also be disclosed to any component of the Youth Authority or Department of Corrections as necessary to the administration of justice.

Investigating State Agencies  
[WIC 5328.15(a)]

In addition, WIC 5328.15(a) permits the release of information to licensed and authorized personnel representing the State Department of Health Services and/or the Department of Social Services in the performance of their duties to inspect, license, and investigate health facilities and community care facilities. Also, any (state) boards which license and certify professionals in the field of mental health pursuant to state law may have access to confidential information.

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#### ***CONFIDENTIALITY***

##### **Release of Patient Information (cont.)**

Crimes Involving Patients  
[WIC 5328.4]

WIC 5328.4 permits the release of information to government law enforcement when there is cause to believe that a patient while hospitalized has committed, or has been the victim of a violent crime, is in unlawful possession of a weapon or is a Mentally Disordered Sex Offender who has escaped from a hospital.

##### **Penalties for Noncompliance**

Failure to comply with all statutory and regulatory provisions, as well as CONREP policies and contract requirements, can result in civil penalties [WIC 5330] and/or criminal action [PC 11141]. Depending on the circumstances, it is also possible that the State would terminate its contract with the CONREP contractor.

##### **Matters of “Public Record”**

It is common misconception that most medical and psychological information pertaining to the judicially committed patient population is a matter of public record. In actuality, only information that the courts have put "on record" is open to the public. Therefore, it is necessary to maintain the utmost discretion when deciding what patient information can be released. The statutes pertaining to confidentiality must be adhered to when releasing patient information to the court.

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#### ***CONFIDENTIALITY***

##### **Summary Criminal History Information (CI&I “Rap Sheets”)**

Rap sheet information secured through direct computer contact with the Department of Justice, California Law Enforcement Telecommunication System (CLETS) is confidential and subject to the provisions of WIC 5330 and PC 502. Government Code Section 6200 provides for felony penalties for the theft or alteration of public record and CLETS information.

Under no circumstances shall the Community Program Director release criminal record information to anyone other than his/her designee. There are statutory prohibitions and criminal penalties for violations of authorized access (PC 11140-11144). Due to specific confidentiality requirements, CI&I rap sheets shall be stored in a secure file and not in the patient’s medical record.

##### **Notice of Confidentiality [MH 1711]**

Any CONREP staff (clerical or professional) who receives or handles any confidential information must sign a **Notice of Confidentiality (MH 1711)**. This document cites the civil and criminal penalties of unauthorized use or disclosure of confidential information used in the CONREP program. The signed forms must then be sent to CONREP Operations to be maintained on file.

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#### ***PATIENT ACCESS TO RECORDS***

##### **Patient Right to Records**

Pursuant to state law and federal regulation, a CONREP patient or former CONREP patient, or his or her conservator, may inspect or receive copies of the patient's CONREP record. (In the case of a patient or former patient who is a minor, the parent or legal guardian may inspect or receive copies of the minor's CONREP record.) Only that portion of the patient's record pertaining to the patient may be accessible.

##### **Access Procedures**

Each CONREP Community Program Director shall establish procedures for patient access to records that are specific to the program. Information is to be made available to patients regarding their rights and procedures regarding exercise of their rights to inspect and receive copies of their records. A Statement of Access to Records Procedures describing the program's policy and procedures is to be posted at each program site.

##### **Inaccessible Contents**

Information that was given in confidence to a health care provider by a person other than another health care provider or by the patient, is not accessible. Such material may be removed from the record prior to inspection or copying.

Inaccessible materials also include collateral contacts and CI&I rap sheets. Should current or former patients request access to their "rap sheet," they should be referred to the California Department of Justice, pursuant to PC 11122 and 11123.

##### **Record Summary**

A patient is entitled to inspect or request a copy of his/her record as opposed to a summary of the record. However, the program may offer the patient a summary of the record and may provide this summary as an alternative to the patient's record, if it is acceptable to the patient.

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#### ***PATIENT ACCESS TO RECORDS***

##### **Request Procedure**

A request to inspect and/or copy the record must be presented in writing to the Community Program Director.

##### **Program Response Time Frames**

A patient's record will ordinarily be made available for inspection within five (5) working days of receipt of a written request. A copy of a patient's record will ordinarily be made available within fifteen (15) working days of receipt of the written request.

These time frames are the same for current and former patients. If a record cannot be made available within these time frames, the patient will be notified of the need for extended time and the date on which the record will be available. This extended time may not exceed thirty (30) calendar days for records which are stored on site, and sixty (60) calendar days for records which are stored off site.

If a summary is provided in response to a patient's request to inspect his/her record, it must be provided within ten (10) working days of receipt of the written request.

##### **Access Denied**

###### **Adults**

A request to inspect and/or copy the record may be denied by the Community Program Director if he/she determines that release of the information would be medically or psychologically detrimental to the patient.

The denial and the reasons for the denial are to be documented in the patient's record. The patient must then be informed that a licensed physician, licensed psychologist or licensed clinical social worker of the patient's choosing will be granted access to the patient's record, if the patient requests it.

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## ***OUTPATIENT TREATMENT ISSUES:***

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#### ***PATIENT ACCESS TO RECORDS***

##### **Access Denied (cont.)**

###### **Minors**

A minor patient's parent, legal guardian, or conservator may be denied access to the patient's record if the Community Program Director determines that access to the record would have a detrimental effect on the mental health provider's professional relationship with the minor patient or the minor patient's physical safety or psychological well being.

The denial and reasons for the denial are to be documented in the record. The parent, legal guardian or conservator must then be informed that a licensed physician, licensed psychologist or a licensed clinical social worker of the parent, legal guardian or conservator's choosing will be granted access to the patient's record, if the parent, legal guardian or conservator requests it.

###### **Inspecting the Record**

When a patient is inspecting his/her record, it is strongly recommended that a clinical staff member be available to interpret the record.

###### **Copying Fees**

Legally permissible charges per page may be assessed for photocopies of records. This charge may be waived at the discretion of the Community Program Director. A patient may not be denied a copy of his/her record because of lack of funds.

If a fee is charged for photocopies, it is permissible to consider the patient's request for a copy complete only after payment is received, unless the fee has been waived.

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#### ***PATIENT GRIEVANCE PROCESS***

##### **Definition**

A grievance can be made about any action taken by a local CONREP program, or an employee or subcontractor of such organizations, which is believed by a patient to adversely affect his or her welfare or status.

A mutually acceptable resolution of the grievance shall be sought at the lowest level possible. If this cannot be achieved, then the decision on what action will be taken in response to the grievance will be made by the local program. If the patient remains unsatisfied, he/she may initiate the formal grievance process described in the following pages.

All programs shall incorporate this grievance process within their operational policies and procedures.

##### **Patient Notice**

All CONREP programs are to inform patients of the CONREP grievance process. A description of the grievance process shall be posted conspicuously at all CONREP office sites in a language necessary to effectively communicate with the patient. Copies of **MH 7010, CONREP Patient Grievance Form**, shall be readily available to all patients.

The patient may ask another person of his or her choice to assist in the preparation and/or discussion of his or her dispute.

Patients must also be advised that they are not required to use this process. Patients have the right to take an issue directly to any external advocacy agency or group.

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## ***OUTPATIENT TREATMENT ISSUES:***

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#### ***PATIENT GRIEVANCE PROCESS***

##### **CONREP Program Responsibilities**

CONREP patients are to be provided prompt consideration of their verbal or written grievance. The CONREP program receiving a grievance shall review and attempt to resolve it promptly and at the lowest level (e.g., therapist, supervisor, Community Program Director or designee) for both the informal discussion and formal procedure. Every effort should be made to complete required actions within the time limits contained in the formal grievance procedure.

##### **Informal Discussion**

The patient, or any person representing the patient, shall informally discuss the grievance with the Community Program Director of the CONREP program or an administrator at a lower level, if appropriate. If the patient grievance is not resolved to the patient's satisfaction, the patient may submit the grievance in writing.

##### **Formal Procedure**

The initiation of a formal grievance process begins with the submission of **MH 7010, CONREP Patient Grievance Form**, by the patient and his/her representative (if applicable).

This grievance procedure uses as few levels of review as practicable (see below). A review level may be skipped with the consent of all parties involved. In addition, time limits for response at any step may be extended with the consent of both parties.

All official parties involved at each level of review should keep copies of the completed grievance form at each stage in the process for reference.



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### ***PATIENT GRIEVANCE PROCESS***

#### **Levels of Review**

Level I:  
Community Program Director

The **CONREP Patient Grievance Form** is submitted to the Community Program Director or designee who shall respond in writing (on the form) to the patient within 15 working days of receipt.

If the patient chooses to take their grievance to an external advocacy agency or group, the Community Program Director shall cooperate and will address the grievance in accordance with the procedures outlined in this section. If the CONREP program is a part of a county mental health system which includes a local grievance review process, then that process may be employed in place of this Level I review.

Level II:  
CONREP Operations Manager

If the patient requests an appeal of the Level I response, he/she shall be given, in writing, the name and address of the CONREP Operations Manager by the Community Program Director.

The CONREP Operations Manager shall review the grievance and Level I response and respond in writing to the patient within 15 working days after the receipt of the appeal. A copy of the response on **MH 7010, CONREP Patient Grievance Form**, is to be sent to the Community Program Director at the same time.

Level III:  
Chief, Forensic Services

If the patient requests an appeal of the Level II response, he/she will be provided, in writing, with the name and address of the Chief, Forensic Services.

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#### ***PATIENT GRIEVANCE PROCESS***

##### **Levels of Review (cont.)**

Level III:  
Chief, Forensic Services (cont.)

The Chief, Forensic Services, shall review the grievance and Level I and Level II responses and respond to the patient in writing within 15 days of receipt. Concurrently, a copy of the response on form MH 7010 is to be sent to the CONREP Operations Manager and Community Program Director.

Level IV:  
DMH Director

If the grievance cannot be satisfactorily resolved to the patient's satisfaction, it may be appealed to the Director of the State Department of Mental Health or his/her designee.

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#### ***DUTY TO WARN***

##### **Summary**

California law has been interpreted by the State Supreme Court as requiring psycho-therapists to effectively warn identifiable, potential victims of harm by psychotherapy patients.

##### **California Civil Code Section 43.92**

This section of the Civil Code provides that there is a duty to warn and protect when the patient has communicated to the psycho-therapist a serious threat of physical violence against a reasonably identifiable victim. This duty shall be discharged by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

##### **Release of Information [WIC 5328 (s)]**

When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonable foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. "Psychotherapist" means anyone so defined within Section 1010 of the Evidence Code, which includes any licensed mental health professional.

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#### ***POSSESSION OF DANGEROUS WEAPONS [WIC 8103]***

##### **Prohibitions**

Not Guilty by Reason of Insanity  
[WIC 8103(b)(c)]

Persons who have been found Not Guilty by Reason of Insanity [PC 1026] of murder, mayhem, or violence, as specified in WIC 8103(b), may not possess any firearm or other deadly weapon.

Those persons who have been found Not Guilty by Reason of Insanity [PC 1026] of crimes other than those specified in WIC 8103(b) may not possess any firearm or other deadly weapon unless the court of commitment has found the person to have recovered sanity.

Other CONREP Patients  
[WIC 8103(a)(d)]

Persons who have been adjudicated by a court of any state to be a danger to others as a result of mental disorder, or who have been adjudicated to be a Mentally Disordered Sex Offender (MDSO) or who have been found Mentally Incompetent to Stand Trial [PC 1370] may not possess any firearm or any other deadly weapon unless the court of adjudication certifies after release from treatment or a finding of restoration of competence that the person may possess such weapons.

**Felony Crime [WIC 8103(h)]**

Any such person in possession of or who attempts to purchase or receive any firearm or other deadly weapon is guilty of a felony, punishable by state prison or county jail.

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#### ***POSSESSION OF DANGEROUS WEAPONS [WIC 8103]***

##### **Deadly Weapon Definition**

Deadly Weapon means any weapon, the possession or concealed carrying of which is prohibited by PC 12020.

##### **Notification to CONREP**

The Conditional Release Program contract answering service will notify the appropriate community program when the Department of Justice reports that a CONREP program client, not permitted to possess a dangerous weapon, has applied to purchase a firearm.

##### **Terms and Conditions of Outpatient Treatment**

The **CONREP Terms and Conditions of Outpatient Treatment** must include a provision prohibiting the possession of firearms or deadly weapons. (See *Terms and Conditions of Outpatient Treatment* in **Section 1410: ADMISSION PROCESS**.)

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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Research and Evaluation Projects**

###### **Purpose**

Forensic Services supports evaluation and research efforts designed to provide more information on CONREP patients and to assess the effectiveness of the CONREP program and its components. Research and evaluation activities can profile particular subgroups of CONREP patients and can monitor the impact of various modes of service.

The information and knowledge gained in evaluation and research activities will be used to assist programs in providing quality, cost effective services. The information will also contribute to the continuing development of CONREP program philosophy and policy on a statewide basis.

###### **Responsibility of Forensic Services**

Forensic Services has the responsibility to protect CONREP patients and the CONREP program by determining that any evaluation and research activity is conducted in accordance with Health and Welfare Agency and Departmental guidelines. These guidelines (described in more detail in the following pages) incorporate the protection of human subjects and support of patient rights through the use of informed consent and maintenance of patient confidentiality.

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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Research and Evaluation Projects (cont.)**

###### **Policy Principles**

Forensic Services affirms the following basic policies regarding all CONREP research and evaluation:

- \* All research (either retrospective or prospective) involving CONREP patients and the presentation of CONREP patient data in written reports and/or public forums may only be conducted with the appropriate level of authorization;
- \* Research and evaluation results may not identify specific patients involved either directly or by implication;
- \* Research and program evaluation involving patients selectively assigned to an intervention to which they would not otherwise be subjected will require written informed consent by the patient; and
- \* Informed consent forms for each study need to specify that no special consideration either positive or negative will be given based on a patient's decision whether to participate or not in any research study.

###### **Forensic Services Research and Evaluation Committee**

###### **Function**

The Forensic Services Research and Evaluation Committee is the vehicle established to assure that the above policy principles are maintained in any study conducted which involves CONREP programs or patients. The committee will review all study proposals and coordinate with the DMH Research and Evaluation Unit to clarify research and evaluation policies and refer acceptable proposals to the next level of authorization, if required.

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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Forensic Services Research and Evaluation Committee (cont.)**

###### **Membership**

The Research and Evaluation Committee shall be composed of Forensic Services and CONREP Operations staff, representatives from DMH Information Services, Research and Evaluation Unit, and CONREP programs. The Chair will be appointed by the Chief of Forensic Services.

###### **Committee Tasks**

In order to accomplish its function and responsibilities, the Research and Evaluation Committee will perform the following tasks. The committee will:

- \* Monitor all research and evaluation activities which involve the presentation of CONREP patient data in written reports and/or public presentations, and will review and make recommendations, as necessary;
- \* Verify that Forensic Service's policy regarding research and evaluation subjects are being followed and provide safeguards for CONREP patients;
- \* Establish and maintain appropriate standards of research and evaluations methodology;
- \* Function as the first level review for all research proposals which require protection of human subjects by determining that the:
  1. Research design meets appropriate standards and quality controls are adequate; and
  2. Probable benefits of the study are assessed in light of the resources being utilized and any risk to the protection of human subjects.



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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Forensic Services Research and Evaluation Committee (cont.)**

###### **Committee Tasks (cont.)**

- \* Evaluate and prioritize, if necessary, the resources utilized in research and evaluation efforts;
- \* Advise DMH and program staff of the CONREP Effectiveness Study, assist in reviewing report drafts and provide input on research directions; and
- \* Monitor the process for accessing Forensic Services client data and the dissemination of research findings and propose procedural changes to management, as needed.

##### **Authorization Process**

###### **Pre-submission Information**

The Department has adopted the format and content of the Health and Welfare Agency, Committee for the Protection of Human Subjects guidelines. The Chair of the Forensic Services Research and Evaluation Committee can provide the researcher a copy of the guidelines. The committee chair can also inform the researcher whether or not the proposed research project merits submission of a formal proposal and full review, and if so, the guideline items which must be addressed in the proposal. Contact the Chief, Forensic Services, for the name and phone number of the current committee chair.

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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Authorization Process (cont.)**

###### **Proposal Guidelines**

All proposals for research and evaluation must include a protocol addressing these six areas:

- \* Hypotheses or major research questions to be addressed;
- \* A clear statement of the research design and methodology to be used;
- \* Sampling methods;
- \* Instruments and measures and their reliability/validity;
- \* A description of any DMH data (from medical records, computerized archives, other research projects, etc.) that the researcher will need to complete the research (see DMH Data below); and
- \* A full description of exactly how human subjects will be used in the research or evaluation.

###### **DMH Data**

If DMH patient-identified data is needed for the study, additional DMH submission review procedures may be required. DMH data includes any CONREP patient records or data. Researchers requesting DMH data will be provided a copy of applicable policy upon request.

###### **Submission of Proposal**

Those interested in conducting research or evaluation must submit a written proposal to the Chief, Forensic Services, State Department of Mental Health.

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#### ***PROTECTION OF RESEARCH AND EVALUATION SUBJECTS***

##### **Authorization Process (cont.)**

###### **Evaluation of Proposal**

The research and evaluation proposal will be reviewed according to the following process:

- \* The Chief, Forensic Services, will refer the proposal to the Forensic Services Research and Evaluation Committee;
- \* If the Forensic Research and Evaluation Committee approves the project, the proposal will be forwarded to the Deputy Director, Long Term Care Division for approval and signature;
- \* If the Forensic Services Research and Evaluation Committee does not approve the project, it may suggest revisions to the author in order to make the proposal acceptable, if rewritten and later re-submitted;
- \* Upon receiving the approval of the Deputy Director, Long Term Care Division, the proposal is then referred to the author for transmittal to the Health & Welfare Agency, Committee for the Protection of Human Subjects; and
- \* Upon the approval of the proposal by the Health & Welfare Agency Committee for the Protection of Human Subjects, the author may begin the research.

###### **Review of Research Results**

At the discretion of the Department of Mental Health, researchers might be required to submit for review, any draft reports developed from research projects using DMH data. Principal investigators will be advised of any requirements for Departmental review, disclaimer statements in publication, or co-researcher status at the time of protocol approval.

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## ***OUTPATIENT TREATMENT ISSUES:***

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#### ***OFFENDER REGISTRATION***

##### **Legal Categories**

Persons convicted of having committed specified crimes are required to register their residence with local law enforcement agencies. There are three categories of offenses requiring registration as described in the following Penal Code (PC) and Health and Safety (H&S) sections:

- \* Specified sex offenses (PC 290);
- \* Arson (PC 457.1); and,
- \* Narcotic/drug offenses (H&S 11590).

##### **General Requirements**

A person who qualifies under these statutes must register upon their release to the community, annually within specified days of their birthday and any time there is a change of name or residence. This legal mandate applies equally to convictions sustained in federal, military and any out-of-state court, as well as to those occurring in California. The specific requirements of each of the above categories, time frames and penalties for failing to comply with registration vary and will be discussed in more detail in the following descriptions.

##### **Application of Registration Provisions**

##### **Current Offense**

A conviction is a prerequisite to all registration requirements of law. Persons found Incompetent to Stand Trial (per PC 1367, et seq.) will not be required to register for IST charges. Not Guilty by Reason of Insanity (NGI) (PC 1026) patients are not required to register as arson or narcotic offenders. However, effective October 8, 1997, PC 1026 patients who have been found guilty of a registerable sex offense in the guilt phase of a bifurcated trial are subject to PC 290 registration requirements. This requirement is retroactive to any finding of guilt for a registerable sex offense dating from July 1, 1944 [PC 290(a)(2)(c)].

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## ***OUTPATIENT TREATMENT OPERATIONS:***

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#### ***OFFENDER REGISTRATION***

##### **Application of Registration Provisions** (cont.)

###### **Current Offense** (cont.)

Mentally Disordered Offenders (PC 2962 or PC 2970) patients who have been convicted of crimes will be required to register if the conviction crimes are among those requiring registration. Patients who are Mentally Disordered Sex Offenders (WIC 6316) and Sexually Violent Predators (WIC 6604) are *all* required to register as sex offenders pursuant to PC 290.

###### **Other Convictions**

While a current commitment may not itself be the basis for application of a particular registration law, other convictions could provide the basis for such a requirement. These other convictions may either predate or postdate imposition of the present commitment.

Therefore, if there is any history of arson, sex, or narcotic/drug offense conviction(s), a patient may be still legally required to register irrespective of the underlying charge for the present commitment.

###### **Patient Notification (Form SS 8047)**

Each of the registration laws requires that the individual legally obliged to register be so advised, in writing, prior to release from the state hospital. This notification for arson, narcotics and sex offender registration, is accomplished by use of a Department of Justice form **SS 8047, Notice of Registration Requirement** which is provided to applicable patients by state hospital staff prior to discharge [per PC 290(b)(1)].

The patient is required to sign the SS 8047 notification form and is given a dated copy of it. It should be kept in safekeeping, as it includes information essential to the registration process.

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## ***OUTPATIENT TREATMENT ISSUES:***

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#### ***OFFENDER REGISTRATION***

##### **CONREP Notification**

CONREP staff should become aware of which patients are subject to registration requirements during their state hospital liaison visits and during the discharge planning conference. Section F: *Commitment Documents* of the **Referral Face Sheet (MH 5628)**, also may indicate that the patient is to register as a sex offender or arson offender.

##### **Documentation of Registration Compliance**

CONREP programs must document compliance with registration requirements for all CONREP patients who are covered by any of the Offender Registration categories. Any requirement to register should be indicated in the patient's **Terms and Conditions of Outpatient Treatment**. Upon admission to CONREP community outpatient treatment (COT) from the state hospital, patients should be encouraged to bring their copy of **Department of Justice Form, SS 8047**, so that it may be duplicated and a copy put in the CONREP patient record.

Each time a patient must officially register with local law enforcement agencies (upon entry into the community, annually at their birthday or with any change of name or residence), a copy of that registration receipt (**Department of Justice Form SS 8072**) should be brought by the patient to his/her CONREP clinician, so that a duplicate can be made and added to the patient's record to document compliance.

If the registering agency does not issue a form SS 8072 receipt, the patient should provide his/her CONREP clinician with the police (registering) agency's designation, the place, date and time of the registration and name of the person conducting the registration. The CONREP clinician should document this information and any verification of the registration in the patient's record.

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### ***OFFENDER REGISTRATION***

#### **Documentation of Unsuccessful Effort at Registration**

In the event that a patient has made an effort to register but has been unsuccessful, the facts should be documented in the CONREP patient record. At a minimum, such documentation shall include the police agency's designation, the place its representative was contacted for registration, the date and time and name of the person contacted, as well as the reason for this not having succeeded. Additionally, a plan to effect prompt registration shall be implemented.

#### **Penalties for Failure to Comply**

Penalties for failure to comply with the legal responsibility to register within the specified time after release from custody vary with each law requiring registration. Criminal penalties range from new misdemeanor to felony charges. In some cases, a mandatory minimum sentence to jail is required.

#### **Specific Registration Requirements: Sex Offenses (PC 290)**

##### **Offenses Requiring Registration as a Sex Offender**

PC 290 sets forth those offenses that require registration as a sex offender. Offenses that require registration include convictions for committing or attempting to commit any of the following statutory violations in California:

- \* PC 207 (Kidnapping, with intent to violate PC sections 261, 286, 288, 288a, or 289);
- \* PC 209 (Kidnapping for ransom, with intent to violate PC sections 261, 286, 288, 288a, or 289);
- \* PC 220 (Assault with intent to commit rape, sodomy, oral copulation, rape in concert w/another, lascivious acts upon a child, or penetration of genitals or anus with foreign object);
- \* PC 243.4 (Sexual Battery);
- \* PC 261(a)(1)(2)(3)(4)(6) (Rape);
- \* PC 262(a)(1) (Rape of spouse where rape involves use of force or violence and has resulted in state prison sentence);

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#### ***OFFENDER REGISTRATION***

##### **Specific Registration Requirements: Sex Offenses (PC 290) (cont.)**

Offenses Requiring Registration as a  
Sex Offender (cont.)

- \* PC 264.1 (Rape or penetration of genital or anus with foreign object);
- \* PC 266 (Procurement of unmarried female for purpose of prostitution);
- \* PC 266c (Sexual intercourse, oral copulation, penetration by foreign object or substance, oral copulation, sodomy, when procured by false or fraudulent representation or pretense w/intent to create fear);
- \* PC 266h(b) (Pimping involving a minor);
- \* PC 266i(b) (Pandering involving a minor);
- \* PC 266j (Procurement of child under 16 years of age for lewd or lascivious act(s));
- \* PC 267 (Abduction of person under 18 years of age for purpose of prostitution);
- \* PC 269 (Aggravated sexual assault of a child);
- \* PC 285 (Incest);
- \* PC 286 (Unlawful sodomy);
- \* PC 288 (Lewd or lascivious act on child under 14 years of age);
- \* PC 288a (Unlawful oral copulation);
- \* PC 288.5 (Continuous sexual abuse of a child under 14 years of age);
- \* PC 289 (Unlawful penetration of genital or anal openings by foreign or unknown object);
- \* PC 311.2(b)(c)(d) (Offense involving obscene material depicting sexual conduct by any minor);
- \* PC 311.3 (Sexual exploitation of minor);
- \* PC 311.4 (Employment/Use of minor to perform sexual act(s));
- \* PC 311.10 (Advertising for sale or distribution obscene matter depicting minor engaging in real or simulated sexual conduct);
- \* PC 311.11 (Possession or control of matter depicting minor engaging in real or simulated sexual conduct);



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#### ***OFFENDER REGISTRATION***

##### **Specific Registration Requirements: Sex Offenses (PC 290) (cont.)**

###### **Offenses Requiring Registration as a Sex Offender (cont.)**

- \* PC 647(a) (former) (child molestation);
- \* PC 647.6 (Annoying or molesting minor);
- \* PC 653f(c) (Solicitation to commit sexual assault;
- \* PC 314 (1)(2) (Indecent exposure);
- \* PC 272 (Contributing to Delinquency of a minor if such act(s) involved lewd or lascivious conduct);
- \* PC 288.2 (Felonious sending of harmful matter with intent to seduce minor);

This listing is not exhaustive, but is merely illustrative. There are frequent legislative revisions and additions to those offenses which qualify a person to register as a sex offender. Any question should be resolved by referencing a current version of PC 290(a)(2)(A) and subsequent sections governing registration requirements.

###### **General Registration Time Frames**

PC 290(a)(1)(A) requires registration within five (5) working days of release to the community with the appropriate law enforcement agency. In addition, each sex offender registrant must update his/her registration annually, within five (5) working days of birthday or change of residence [PC 290(a)(1)(C)] or name [PC 290(f)(2)]. Each time it is required, such registration must be made with the local law enforcement agency of the city or county responsible for the area in which the registrant resides.

###### **Sexually Violent Predators (WIC 6604) Registration Time Frames**

All Sexually Violent Predators (WIC 6604) receiving treatment in the community must verify his/her address every 90 days in a manner to be established by the Department of Justice [PC 290(a)(1)(D)]. Failure to comply with this requirement may result in imprisonment in jail or prison for up to a year [PC 290(g)(5)].

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#### ***OFFENDER REGISTRATION***

##### **Specific Registration Requirements: Sex Offenses (PC 290) (cont.)**

###### **CONREP Documentation Requirement**

In the case of any CONREP patient who is required to comply with PC 290 registration, the CONREP patient record will reflect proof of registration compliance in the following circumstances:

- \* Within five (5) working days of initial release to community outpatient treatment;
- \* Annual renewal;
- \* Quarterly updates for WIC 6604 patients;
- \* Any subsequent change of residential site; or
- \* Any subsequent change in community outpatient treatment after rehospitalization.

(See **Documentation of Registration Compliance** above.)

###### **Duration of Responsibility to Register**

The requirement to comply with registration per Penal Code Section 290 continues throughout the lifetime of the individual offender.

##### **Specific Registration Requirements: Arson Offenses (PC 457)**

###### **Offenses Requiring Registration as a Arson Offender**

Penal Code Section 457.1 requires that persons convicted of having violated or attempted to violate either of the following must register as an arson offender :

- \* PC 451 (Arson); or
- \* PC 453 (Possession of combustible materials).

###### **Registration Time Frames**

An arson offender must register with the local law enforcement agency within thirty (30) days of coming into any county or city or becoming domiciled on any campus of the University of California or California State University.

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#### ***OFFENDER REGISTRATION***

##### **Specific Registration Requirements: Arson Offenses (PC 457) (cont.)**

###### **Registration Time Frames (cont.)**

Within ten (10) days of changing residence, the individual must advise in writing the agency with which he/she originally registered upon release. That agency will then advise the appropriate law enforcement agency having jurisdiction over the new site of residence.

###### **CONREP Documentation Requirement**

In the case of any patient required to register per PC 457.1, the CONREP patient record will reflect affirmative evidence of compliance with the registration responsibility within five working days of release to COT, or change of residential site, including re-release to COT after rehospitalization subsequent to initial release to COT.

###### **Duration of Registration Responsibility**

While this legal responsibility ordinarily continues for the lifetime of the convicted individual, the law does contain some special legal proceedings providing relief from the registration responsibility. For example, juvenile court matters expire upon the individual's attaining the age of twenty-five (25) years or upon having his/her juvenile court record sealed pursuant to Welfare and Institutions Code (WIC) Section 781, whichever occurs first.

Similarly, the responsibility to register terminates legally upon the individual offender being granted a Certificate of Rehabilitation from the Superior Court pursuant to PC 4852.01. PC 1203.4 provides for the petitioning of Superior Court upon completion of probation for certain legal relief from the consequences of any conviction. PC 457.1 provides for relief from this registration requirement as within the granting court's discretion. That is, if the court grants a motion brought per PC 1203.4, *and* specifically provides that registration is one of

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those disabilities removed by such order, this requirement ceases.

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### ***OFFENDER REGISTRATION***

#### **Specific Registration Requirements: Narcotic/Drug Offenses (H&S 11590)**

Offenses Requiring Registration as a Drug Offender

Health and Safety Code Section 11590 requires individuals convicted of specified offenses to register. This statute lists a large number of controlled substance offenses for which conviction requires registration.

Registration Time Frames

Registration must occur within thirty (30) days of the release of any offender so required, commencing with residence, or even temporary domicile for thirty (30) or more days, in any county or city.

Within ten (10) days of changing residence, the responsible patient must notify the agency with which he/she last registered of the new site of residence. That agency will, in turn, notify the appropriate law enforcement agency having jurisdiction over the new residential area.

CONREP Documentation Requirement

In the case of any patient required to comply with H&S 11590 registration requirements, the CONREP patient record is to contain documentation of such compliance within five (5) working days of release to COT, relocation of his/her residence, or return to COT after rehospitalization.

Exception to Registration Requirement

If final disposition of the conviction for one of the offenses noted in H&S 11590 resulted in a commitment to the State Civil Addict Program ("CRC"), registration is not legally required.

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#### ***OFFENDER REGISTRATION***

##### **Specific Registration Requirements: Narcotic/Drug Offenses (H&S 11590) cont.)**

##### **Duration of Registration Responsibility**

Any person required to register as a drug offender shall be legally relieved of that responsibility five (5) years *after* discharge from prison, parole or a grant of probation (whether or not it included a period of jail time).

Persons required to register pursuant to the provisions of H&S Section 11590, who successfully complete probation, may petition the court per PC 1203.4 for relief from the registration requirement. If the court grants the petition, there no longer is any legal obligation to register.

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## ***OUTPATIENT TREATMENT OPERATIONS:***

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Implementation of National Voter Registration Act**

In 1993, the federal government passed the National Voter Registration Act (NVRA). On May 4, 1995, the United States District Court required the state to implement its previously submitted plan (Chapter 4, Voter Registration at Social Service Agencies). This Act requires that voter registration services be provided by State-funded programs primarily engaged in providing services to persons with disabilities.

State and county mental health programs have been identified as voter registration agencies, which includes all CONREP programs and providers of CONREP funded services. Each eligible person who is provided services by the agency must be given a form which asks if he/she wishes to register to vote.

##### **Responsibilities of Voter Registration Agency**

The primary responsibilities of a voter registration agency are to:

- \* Distribute a form to register to vote to each person served by the agency at admission or initiation of services, or upon notification of a patient's change of name or address;
- \* Assist the voter in completing the form, with the same level of assistance the agency provides for completion of its own forms;
- \* Accept the completed forms from the voters for return to the election officials;
- \* Guarantee that no program employee will attempt to influence the voters' decision whether or not to register, or with which political party; and
- \* Make clear to the voter that program benefits and services will not be linked in any way to the applicant's decision to register or to not register to vote.

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Required Notices**

The NVRA requires that each voter applicant be advised of certain information including:

- \* That assistance in filling out the form will be provided, if requested;
- \* That he or she has the right to complete the form without assistance;
- \* That failure to indicate whether or not the applicant wishes to register to vote will automatically be determined to be a declination to register; and
- \* A contact name, address and phone number, if the applicant feels anyone has tried in any way to influence his/her decision to vote or not, or with which political party.

The above notices have been incorporated in a **Instructional and Declaration (I&D) Form**. A copy of this form can be found in **CONREP Forms** in **Volume II** of this manual.

##### **Eligibility to Register**

##### **Eligible CONREP Patients**

NVRA services must be provided to all CONREP patients who are:

- \* A citizen;
- \* Live in California;
- \* At least 18 years of age by the date of the next election; and
- \* Not currently in prison or on parole for the conviction of a felony, or not been formally judged by a court to be mentally incompetent to vote.

Any judicial commitment, in itself, does not imply a judgment about the patient's competency to vote.



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#### ***VOTER REGISTRATION PROCEDURES***

##### **Eligibility to Register (cont.)**

###### **Ineligible CONREP Patients**

NVRA services cannot be offered to CONREP patients who:

- \* Are on parole for a conviction of a felony;
- \* Are confined in a locked mental health treatment facility in the community or in a public or private mental health treatment center pursuant to a court order; or
- \* Do not otherwise meet the eligibility requirement to vote or register to vote (Elections Code Sections 2201(c) & 2211)

CONREP parolee/patients should be informed that persons on parole are not eligible to vote and that under state and federal law, it is a crime to submit a voter registration affidavit if the person knows he or she is not eligible to register.

##### **Application Forms**

###### **Instructional and Declaration Form**

At the time voter registration services are provided, the patient will be given an **Instructional and Declaration** Form which asks if he or she wishes to register to vote. The form includes the following information:

- \* Eligibility criteria;
- \* Who needs to use the registration form; (i.e. new registration, move to a new address, change of name or political party);
- \* Statement informing the voter that if he/she does not check either "Yes" or "No" box, it will assumed that he or she has decided not to register to vote; and
- \* Required Notices (see previous page).

###### **Mail-in Voter Registration Form**

Attached to each Instructional and Declaration Form will be a pre-addressed, postage paid Mail-in Voter Registration Form which will enable the patient to complete the registration process immediately, if he/she so chooses.

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Application Forms (cont.)**

###### **Access to Registration Materials**

The Secretary of State (SOS) or county elections officials will provide all forms, notices and other materials necessary for the voter registration process. Each CONREP program should establish liaison with the local county election officials in its area to facilitate the receiving and sending of the necessary registration forms. The appropriate county elections office will supply voter registration forms upon request.

###### **Forms in Other Languages**

Voter Registration Forms and Instructional and Declaration Forms in minority languages (in combination with English) are available at the county elections office. If a CONREP patient wishes a form in a language other than those available at the local elections office, please provide the patient with the Secretary of State's toll free number: 1-800-345-VOTE.

##### **Registration Process**

###### **Application to Register to Vote**

Voter registration services are to be provided when mental health services are provided, with minimal program disruption. At any initial intake interview, CONREP patients shall be provided voter registration forms and be offered voter registration assistance during intake procedures, except when the patient is in a crisis situation. Those patients currently receiving services should be offered voter registration services at the next appointment, if they have not already been offered to them.

If a CONREP patient informs the program, either in person or by mail, that his/her address has changed, or he/she wants to change political parties, the patient must be offered the opportunity to update his/her voter registration by either giving or mailing a voter registration form to that person.

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Registration Process (cont.)**

###### **Completion of Instruction and Declaration Form**

Each applicant must either register to vote or decline to register by completing the **Instructional and Declaration (I&D) Form**. When offering or assisting CONREP patients with voter registration, staff are to make sure that the patient is made aware of the four (4) requirements that must be met to register to vote (Found in the first box of the I&D Form). The applicant will be asked to affirm his or her choice by signing and dating the form.

If the applicant does not check either box, it will be assumed that he/she has decided not to register and program staff will so indicate on the form. Program staff are to indicate in the "For Agency Use Only" box, whether the patient completed to voter registration process by turning in their registration form.

These I&D forms must be kept on file by each CONREP program for possible use in implementation surveys to document compliance with the federal court order.

###### **Completion of Voter Registration Form**

If the patient checks "Yes" to the question regarding registration, the staff person will give the applicant a pre-addressed, postage paid mail-in Voter Registration Form which he/she can complete and return to the staff person, or choose to take it home.

If the patient takes the application home to fill out and possibly return later, the staff member should check the box indicating that no registration form had been completed, since it will not be possible to determine whether or not the voter follows through with completing the form.

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Registration Process (cont.)**

##### **Completion of Voter Registration Form (cont.)**

The program staff person who is offering voter registration services must make sure that the forms are completely filled out and signed by the CONREP patient. The staff person does not have to complete Box 13 and the Registration Form Receipt (stub) on the form. However, the staff person does need to fill out the bottom part of the Instructional and Declaration Form.

##### **Providing Assistance**

The same level of assistance shall be provided to CONREP patients registering to vote as is provided for completing other forms for mental health services. This level of assistance includes the provision of interpreter services for CONREP patients who are deaf and hearing impaired and assistance to patients who are physically disabled, blind and visually impaired. Voter registration forms are not available in Braille.

If a CONREP patient is physically or mentally disabled and cannot sign the Voter Registration Form, he/she must make a mark on the signature line ("X" or any other mark), witnessed by two persons. The staff person who is assisting the CONREP patient can be a witness.

##### **Questionable Registrations**

CONREP staff members may not refuse to provide voter registration services to any CONREP patient, even if there is reason to believe that the patient does not meet voter eligibility requirements. The patient is to be made aware of the four (4) requirements to register to vote, which are listed in the first box of the I&D Form. In addition, CONREP patients should be informed that persons on parole are not eligible to vote and that under state and federal law, it is a crime to submit a voter registration affidavit if the person knows he or she is not eligible to vote.

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Registration Process (cont.)**

##### **Flagging Questionable Registrations**

Questionable registrations must be flagged. Although decisions on registration can only be made by the county Registrar of Voters or the Secretary of State, “flagging” will be used by CONREP programs when there is reason to believe that the applicant does not meet voter eligibility requirements.

When flagging questionable registrations to send to the county elections office, a self-sticking, color tipped “tape flag” should be used, preferably red. Write on the tape flag a code, indicating which eligibility requirement is in question, using the following codes:

- \* US: for questionable citizenship;
- \* BD: for questionable age qualification;
- \* F: if you have reason to believe that the applicant is a felon on parole; or
- \* MI: if you have proof that the patient has been determined mentally incompetent by a court and has been placed under a conservatorship by court order.

Do not make any permanent marks on the form, nor flag questionable registrations in the patient’s presence. Flagging is not necessary if that patient elects to take the form with her/him.

Registrants whose forms are “flagged” will still be added to voter rolls by county election officials and then forwarded to the Secretary of State’s Office for investigation to determine eligibility and the necessity of any follow-up action to remove any ineligible individual from the voter rolls.

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## ***OUTPATIENT TREATMENT ISSUES:***

**1470**

### **PATIENT RIGHTS & PROTECTION ISSUES**

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#### ***VOTER REGISTRATION PROCEDURES***

##### **Record Keeping and Reporting**

###### **Confidentiality**

Confidentiality will be ensured by use of a standard California Mail Voter Registration Form. To maintain confidentiality standards, voter registration forms and all other voter registration materials must be kept separate from other forms for persons receiving mental health services and are not to be filed in the patient's case record.

###### **Separate File**

The Secretary of State requires that the completed Instructional and Declaration Form be retained for two years by the voter registration agency (CONREP). These forms are to be maintained in a separate file by the CONREP program and alphabetized by the patients' last names.

###### **Submission of Completed Forms**

In order to avoid confusion and potential delays in submission, each provider should forward completed registration forms to the elections office in the county where the provider is located. This should be done, at minimum, on a weekly basis, and, ideally, within a day of completion of the form.

The county elections office requires that the valid forms must be received by them at least 25 days prior to the election. To make sure that this deadline is met, each provider shall obtain a copy of the county election schedule from the election office. Different elections are held yearly and these vary from county to county.

To avoid unnecessary mailing cost, do not bundle completed forms when transmitting these to the county, as each individual form is self-stamped and self-addressed. However, *flagged* registration forms should be bundled and sent to the elections office separately.